

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1255 Tax Credits/Hiring
SPONSOR(S): Brummer
TIED BILLS: **IDEN./SIM. BILLS:** SB 2182

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Workforce and Economic Development (Sub)</u>	<u>4 Y, 0 N</u>	<u>Winker</u>	<u>Billmeier</u>
2) <u>Commerce</u>	<u></u>	<u>Winker</u>	<u>Billmeier</u>
3) <u>Appropriations</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The bill provides for a sales, use, and corporate income tax credit to businesses which hire persons with disabilities on or after July 1, 2004. The credit against the tax is effective January 1, 2005 and the business must demonstrate to the Department of Education's Division of Vocational Rehabilitation that a person with a disability was hired.

The bill establishes a computation for the sales and use tax credit which is 20% of the actual monthly wages paid in Florida during a taxable period to each employee who has a disability. The sales and use tax credit may be claimed for no more than five such employees per taxable period and may not exceed \$670 per eligible employee per month. A business claiming the sales and use tax credit cannot use the corporate income tax credit.

The bill provides that the corporate tax credit claim shall be computed as 20% of the actual monthly wages paid to each employee with a disability. Then corporate tax credit may be claimed for no more than five eligible employees per taxable year and may not exceed \$8,000 per eligible employee per taxable year.

The bill provides for any unused tax credits may be carried forward for a period not to exceed 5 years. The bill provides for criminal penalties for fraudulent claims (first degree misdemeanor) or for underpayment of tax as a result of grossly overstating the claim for the credit (third degree felony).

The bill provides rulemaking authority for DOE to implement the application and verification process provided for in the bill. The bill provides that this targeted tax credit program expires on June 30, 2009, but any tax credits earned by that date would be granted.

The bill will have a significant but indeterminate negative fiscal impact upon General Revenue. The bill has been referred to the Revenue Estimating Conference for its estimated fiscal impact.

The bill takes effect July 1, 2004.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1255a.com.doc
DATE: March 15, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

The bill provides for a sales, use, and corporate income tax credit to businesses which hire persons with disabilities on or after July 1, 2004. The credit against the tax is effective January 1, 2005 and the business must demonstrate to the Department of Education's Division of Vocational Rehabilitation that a person with a disability was hired.

The bill establishes a computation for the sales and use tax credit which is 20% of the actual monthly wages paid in Florida during a taxable period to each employee who has a disability. The sales and use tax credit may be claimed for no more than five such employees per taxable period and may not exceed \$670 per eligible employee per month. A business claiming the sales and use tax credit cannot use the corporate income tax credit.

The bill provides that the corporate tax credit claim shall be computed as 20% of the actual monthly wages paid to each employee with a disability. Then corporate tax credit may be claimed for no more than five eligible employees per taxable year and may not exceed \$8,000 per eligible employee per taxable year.

The bill provides for any unused tax credits may be carried forward for a period not to exceed 5 years.

The bill provides for criminal penalties for fraudulent claims (first degree misdemeanor) or underpayment of tax as a result of grossly overstating the claim for the credit (third degree felony).

The bill provides rulemaking authority for DOE to implement the application and verification process provided for in the bill. The bill provides that this targeted tax credit program expires on June 30, 2009, but any tax credits earned by that date would be granted.

The bill will have a significant but indeterminate negative fiscal impact upon General Revenue. The bill has been referred to the Revenue Estimating Conference for its estimated fiscal impact.

The bill takes effect July 1, 2004.

Current Situation

The Florida Department of Education (DOE) is the designated state agency for the purposes of effecting compliance with the federal Vocational Rehabilitation Act of 1973 as amended. See Part II of Chapter 413, F.S. The Division of Vocational Rehabilitation (DVR) in DOE is the administrative unit responsible for determining eligibility and providing services to persons with disabilities. See s. 413.202, F.S.

Section 413.20(3), F.S., defines the assessment conducted by DVR for determining eligibility and vocational rehabilitation needs as a review of data to determine whether a person is eligible for vocational rehabilitation services and to assess the priority of such services. If necessary, DVR may conduct a comprehensive assessment of the strengths, resources, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment. DVR also establishes goals, objectives, and the nature and scope of services to be provided to the client.

Section 413.20(9), F.S., defines employment outcome as entering or retaining full-time or part-time competitive employment in the integrated labor market to the greatest extent practicable, supported employment, or other type of employment, including self-employment, telecommuting, or business ownership. Such employment ought to be consistent with the person's strengths, resources, priorities, concerns, abilities, capabilities, interest, and informed choice.

Section 413.20(16), F.S., defines a person who has a disability as someone who has a physical or mental impairment that, for the person, constitutes or results in a substantial impediment to employment and who can benefit in terms of an employment outcome from vocational rehabilitation services.

Based on 2000 Census data for Florida, 22.2% of the population has a disability. Of those working age persons with a disability (age 21-64), 58.3% were employed compared to 74.9% of working age persons without a disability.

Review of the Division of Vocational Rehabilitation

In September 2003, the Office of Program Policy Analysis and Government Accountability (OPPAGA) published a report¹ describing the progress of DVR in response to OPPAGA's findings and recommendations of a January 2002 report² in which OPPAGA was critical of the now abolished Occupational Access and Opportunity Commission.

In the September 2003 report, OPPAGA found that DVR's performance in serving vocational rehabilitation clients had improved since the elimination of the Occupational Access and Opportunity Commission by the Legislature in 2003 and giving program oversight to the Department of Education.³

Division of Vocational Rehabilitation Funding

The Division of Vocational Rehabilitation is funded through a state and federal matching agreement. The state contributes 21.3% of the program funding and the federal government provides 78.7% of the funding. For FY 2003-04, the Legislature appropriated \$25,094,608 in general revenue and the state is expected to receive \$75,441,409 in federal funds.

Division of Vocational Rehabilitation and the State's Workforce Development System

According to DVR's 2004 Federal State Plan for Vocational Rehabilitation Services, DVR has partnered with the Agency for Workforce Innovation (AWI) and Workforce Florida, Inc. (WFI), to provide services to mutual clients in terms of establishing definitions, eligibility requirements, joint use of evaluations and assessments, and the referral process. In addition, DVR has established relationships with each of the twenty-four regional workforce boards to ensure the delivery of services.

¹ Office of Program Policy Analysis and Government Accountability, *Agency Implements Recommendations to Improve Vocational Rehabilitation Services*, Report No. 01-51.

² Office of Program Policy Analysis and Government Accountability, *Special Examination, Responsibilities Not Fulfilled by Occupational Access and Opportunity Commission; Program Performance Declines*, Report No. 02-06.

³ Ch. 2002-22, Law of Florida

Division of Vocational Rehabilitation and other Partners

According to DVR's 2004 Federal State Plan, it has established collaborative relationships with numerous entities outside the state's workforce development system. These include:

- *The Able Trust* – The Able Trust is a Florida-based non-profit corporation whose mission is to assist persons with disabilities in the vocational rehabilitation process and to develop educational and public awareness programs. The Able Trust also provides funds to community rehabilitation program employment programs and to individual clients.
- *DOE's Division of Blind Services* – The Division of Blind Services and DVR collaborate with each other for the delivery of services to persons with disabilities while minimizing the duplication of efforts and maximizing their respective resources.
- *Developmental Disabilities Program* – The Developmental Disabilities Program in the Department of Children and Families coordinates with DVR in providing supports and services to persons with disabilities.
- *Florida School for the Deaf and Blind* – Assists DVR in providing services to persons who are deaf or blind.
- *Florida Small Business Development Center Networks* – Coordinates with DVR on behalf of persons with disabilities who desire to pursue the goal of self-employment.
- *Mental Health Programs* – DVR coordinates the provisions of services with the Mental Health Programs within the Department of Children and Families.
- *Florida Independent Living Council* – DVR has cooperative agreements with the FILC and the Centers for Independent Living throughout the state.

According to DVR's 2004 Federal State Plan, it cooperative agreements and contracts with numerous vocational rehabilitation service providers. DVR has contracts for the delivery of employment related services. At the time of the 2004 Federal State Plan (October 1, 2003), DVR had about 61 contracts for vocational evaluations and 200 contracts for employment services and supported employment services. DVR also had 28 contracts with 14 Centers for Independent Living throughout the state.

As part of the 2004 Federal State Plan, DOE/DVR conducted an extensive needs assessment of the program and its clients. Program performance and gaps in services were identified by DVR staff, clients, and partners. Two client-related issues/areas addressed in the needs assessment included the following:

- The perception that there are economic disincentives for persons with disabilities obtaining employment.
- Lack of transportation.
- Lack of Information about and availability of supported employment services.
- Youth need education and employment expectations, career planning, and self-advocacy.

Also, the DVR needs assessment identified numerous employer related issues. These include:

- Employers need to be educated about hiring people with disabilities and the benefits of the vocational rehabilitation program.
- Employers need to be provided more information about disability issues and employment-related needs of persons with disabilities.
- Employers are not aware of what DVR services are available to them to support the hiring of persons with disabilities.
- DVR needs to develop improved relationships with employers at the upper management levels.
- The use of Business Advisory Councils may be an effective strategy for improving the placement activities for persons with disabilities.
- Education and awareness programs designed for employers should also address attitudinal and fear issues about hiring persons with disabilities.

Other Study of Employer's Attitudes Toward Hiring Persons with Disabilities

The Able Trust, also known as the Florida Governor's Alliance for the Employment of Citizens with Disabilities, is a 501(c)(3) public-private partnership foundation established by the Florida Legislature in 1990. The Able Trust provides grants and raises funds to support vocational rehabilitation programs and services leading to the employment of Florida citizens with disabilities. Funding for the Able Trust is provided under Florida statutes through a surcharge on non-criminal moving traffic violations and through allocation of fees for temporary disabled parking permits. In addition, the Able Trust receives revenue through private gifts, grants and donations.

In October 2003, the Able Trust released a report describing a statewide survey of employers on their attitudes towards and hiring practices of persons with disabilities.⁴ The Able Trust contracted with the Center for Information, Technology, and Evaluation Services of Florida State University to conduct the study. A state-wide sample of Florida businesses was surveyed. Businesses were divided into Chamber of Commerce members and non-Chambers for comparison purposes.

The study reported the following findings:

- About one-third of all respondents reported being highly aware of disability issues with Chamber members having a higher level of awareness than non-members. Both groups agreed that persons with behavioral disabilities were the most difficult of all categories to accommodate on the job.
- About 80% of the businesses in the total sample said they employed one or more persons with disabilities and 70% reported hiring between 1 and 15 such employees.
- About 40% of the respondents did not anticipate hiring any persons with disabilities within the next two years.
- Fifty percent of the respondents stated that their business has a formal policy for hiring persons with disabilities.
- Only about 30% of all businesses in the total sample have policies that commit them to actively recruit persons with disabilities.
- Over 50% of the total sample believes that their companies do a great job of providing adequate accommodations, matching jobs and abilities, creating a disability-friendly work environment, and handling termination of workers with disabilities when necessary.
- Businesses generally had a lack of familiarity with several state and national agencies and programs related to persons with disabilities.

The study presented the following conclusions:

- Overall results present generally a positive picture of the practices, policies, and attitudes of Florida employers toward workers with disabilities.
- Findings indicate that Chamber of Commerce members appear to have a greater level of awareness of disability issues and have formal disability hiring policies and have made accommodations for employees with disabilities.
- There is a lack of knowledge among employers about disability issues and resources available to businesses.
- Businesses employing persons with disabilities had more positive attitudes toward them than businesses which tended to not employ such employees.

⁴ 1The Able Trust, *Dispelling Myths of an Untapped Workforce: A Study of Employer Attitudes Toward Hiring Individuals with Disabilities*, October 2003.

The Able Trust, in collaboration with the Business Leadership Network, has published a resource guide for employers on the hiring of persons with disabilities.⁵ The report is a comprehensive guide for employers on dispelling myths, hiring, accommodations, benefits, and resources for hiring persons with disabilities. In addition, the guide provides contact information for numerous resources and benefits to employers who have hired or would consider hiring persons with disabilities, including DVR contacts and current tax benefits for employers.

Current Tax Credits in Florida Statutes

Section 212.099, F.S. of the Florida Tax Code relating to sales and use tax provides for several tax credits for businesses. These include:

- Enterprise Zone Jobs Tax Credit (s. 212.096, F.S.)
- Urban High Crime Area Jobs Tax Credit (s. 212.097, F.S.)
- Rural Job Tax Credit (s. 212.098, F.S.)

Section 220.193 of the Florida Tax Code relating to corporate taxes provides for several tax credits for businesses. These include:

- Enterprise Zone Tax Credit (s. 220.181, F.S.)
- Enterprise Zone Property Tax Credit (s. 220.182, F.S.)
- Community Contribution Tax Credit (s. 220.183, F.S.)
- Hazardous Waste Facility Tax Credit (s. 220.184, F.S.)
- State Housing Tax Credit (s. 220.185, F.S.)
- Rural Job and Urban High Crime Area Tax Credit (s. 220.1895, F.S.)
- Child Care Tax Credit (s. 220.19, F.S.)
- Capital Investment Tax Credit (s. 220.191, F.S.)

Current Tax Benefits for Employers who Hire Persons with Disabilities

The federal Work Opportunity Tax Credit (WOTC), authorized by the Small Business Job Protection Act of 1996 (P.L. 104-188), is a federal tax credit that encourages employers to hire persons within nine targeted groups of job seekers by reducing the employers' federal income tax liability by as much as \$2,400 per qualified new worker. WOTC applies only to new employees hired after September 30, 1996, and before January 1, 2004. The new employee must be in one or more of the following nine target groups:

- A member of a family receiving or has recently received Temporary Assistance to Needy Families or Aid to Families with Dependent Children.
- An 18-24 year-old member of a family receiving or has recently received Food Stamps.
- An 18-24 year-old resident of the Federal designated Empowerment Zones (EZ), Enterprise Communities (EC), or Renewal Communities (RC).
- A 16-17 year-old EZ, EC, or RC resident hired between May 1 and September 15 as a Summer Youth Employee.
- A veteran who is a member of a family receiving or has recently received Food Stamps.
- A disabled person who completed or is completing rehabilitative services from a State or the U.S. Department of Veterans Affairs.
- An ex-felon who is a member of a low income family.
- A recipient of Supplemental Security Income (SSI) benefits.
- The New York Liberty Zone Business Employee. See U.S. Department of Labor, Employment and Training Administration at www.doleta.gov.

⁵ The Able Trust, Disability Employment Practices: A Resource Guide for Recruiting, Hiring, and Employing People with Disabilities.

An individual with a disability who has completed or is completing services from DVR is one of the targeted groups which make businesses eligible for the Work Opportunity Tax Credit. Florida's Agency for Workforce Innovation is responsible for assisting employers with the Work Opportunity Tax Credit in collaboration with Workforce Florida Inc., through the 24 regional workforce boards and one-stop job center throughout the state. DVR, in collaboration with AWI, is responsible for certifying that an employee is a member of a targeted group upon a filing by an employer of IRS Form 8850 which is the pre-screening notice and certification request for work opportunity tax credits. DVR/AWI issues a certification of eligibility upon receiving the request and documentation from the employer. See AWI's Work Opportunity Tax Credit Handbook.

In addition to the Work Opportunity Tax Credit there are other federal tax incentives for employers to help offset the cost of providing accommodations for employees with disabilities. These include:

- The Small Business Tax Credit: IRS Code Section 44, Disabled Access Credit – Small businesses may take an annual tax credit for making their businesses accessible to persons with disabilities. Eligible businesses must have earned no more than \$1 million in revenue in the previous year and have 30 or fewer full-time employees. The tax credit is 50% of expenditures over \$250, not to exceed \$10,250, for a maximum of benefit of \$5,000. The credit is subtracted from the businesses' total tax liability.
- The Architectural/Transportation Tax Deduction: IRS Code Section 190, Barrier Removal – Businesses may take an annual deduction for expenses incurred to remove physical, structural, and transportation barriers for persons with disabilities. All businesses are eligible and the tax deductions up to \$15,000 a year for expenses incurred to remove barriers for persons with disabilities. Amounts in excess of the \$15,000 may be depreciated. See U.S. Department of Labor, Office of Disability Employment Policy at www.dol.gov/odep.

There are currently no state tax incentives for businesses which specifically target the hiring of persons with disabilities.

C. SECTION DIRECTORY:

Section 1: Creates s. 212.099, F.S.; providing a state tax credit for businesses for hiring a person with a disability; providing a definition of a person who has a disability with the same meaning as in s. 413.20, F.S.; allowing for a tax credit beginning January 1, 2005 on persons with a disability hired on or after July 1, 2004; establishing the amount of tax credit; establishing a verification process by the Department of Education's Division of Vocational Rehabilitation that the employees meet the eligibility requirement; requiring the department and the division to adopt rules to establish the application and verification process; providing for penalties for making a fraudulent claim and procedure for making overpayments; and providing for an expiration of the tax credit program on June 30, 2009.

Section 2 ; Creates s. 220.193, F.S.; providing a state tax credit for businesses for hiring a person with a disability; providing a definition of a person who has a disability with the same meaning as in s. 413.20, F.S.; allowing for a tax credit beginning January 1, 2005 on persons with a disability hired on or after July 1, 2004; establishing the amount of tax credit; establishing a verification process by the Department of Education's Division of Vocational Rehabilitation that the employees meet the eligibility requirement; requiring the department and the division to adopt rules to establish the application and verification process; providing for penalties for making a fraudulent claim and procedure for making overpayments; and providing for an expiration of the tax credit program on June 30, 2009.

Section 3: Amends subsection (8) pf s. 220.02, F.S.; adding a reference to newly created s. 220.193 in legislative intent language that credits against the corporate income tax or the franchise tax be applied in a certain order.

Section 4: Amends subsection (1) of s. 220.13, F.S.; relating to adjusted federal income; and adding newly created s. 220.193 to adjusted federal income as an addition such taxable income.

Section 5: The bill takes effect July 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill will have a significant but indeterminate negative fiscal impact upon General Revenue. The bill has been referred to the Revenue Estimating Conference for its estimated fiscal impact.

2. Expenditures:

The Division of Vocational Rehabilitation in its analysis of the bill and did not provide any increased expenditure information. DVR did state that they are currently placing 10,000 persons in jobs each year.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Businesses will receive a tax credit for hiring and retaining employees with disabilities which could be an incentive for increasing the number of person with disabilities hired by Florida businesses. Increasing the workforce will return money to local businesses earned by employed persons with disabilities.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenues in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides for the promulgation of rules by the Department of Education and the Division of Vocational Rehabilitation.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Division of Vocational Rehabilitation recommends that the Division of Blind Services also be extended rulemaking authority and be required to certify employees who are served by the Division of Blind Services.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 15, 2004, the Workforce and Economic Development Subcommittee favorably adopted HB 1255 and also recommended the adoption of a strike-all amendment to the bill. The strike-all amendment differs from HB 1255 as follows:

- Strike-all amendment adds the definitions of “business”, “Division”, “eligible employee”, “qualified business”, and “taxable year.”
- An eligible business is a business registered for and participating in the unemployment compensation program and is qualified when approved by the Division of Vocational Rehabilitation to receive a tax refund.
- An eligible employee is a person with a disability who was hired after July 1, 2004, works at least 80 hours a month, and receives a salary exceeding the federal minimum wage.
- Strike-all amendment differs from HB 1255 by making the tax incentive program for businesses which hire persons with disabilities a tax refund rather than a tax credit program.
- Strike-all amendment enumerates which taxes paid by a business are eligible for a refund, which include corporate income taxes, insurance premium taxes, sales and use taxes, intangible personal property taxes, emergency excise taxes, excises taxes on documents, and ad valorem taxes.
- Strike-all amendment, unlike H 1255, provides that an eligible employee may serve as the basis for a tax refund for a period not to exceed 2 calendar years.
- Strike-all amendment provides for an appropriation of \$2,820,000 from the General Revenue to the Department of Education for the payment of refunds during FY 2004-05 under the tax refund program for hiring a disabled person.
- Strike-all provides that if the Legislature does not appropriate an amount sufficient to pay all refunds in a fiscal year, DVR must amend payments to eligible businesses and prorate refunds to qualified businesses for the fiscal year.
- Strike-all amendment differs from HB1255 in terms of the penalties a business would be subject to for making a fraudulent tax refund claim by increasing the mandatory penalty to an amount of 200% of the tax refund, rather than 100% of the tax credit plus interest under HB 1255; makes fraudulent claims a felony of the third degree, rather than a first degree misdemeanor under HB 1255; and deletes the underpayment of a tax in HB1255 as an offense punishable as a third degree felony.
- Strike-all amendment repeals the tax refund program on June 30, 2010, unlike HB 1255 which repeals the program on June 30, 2009.